



RULE-MAKING ORDER

CR-103E (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Emergency Rule Only

Effective date of rule:

Emergency Rules

☒ Immediately upon filing.

☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: These rules explain the requirements for health carriers when enrolling and covering persons under age 19.

Insurance Commissioner Docket no.: R 2010-14

Citation of existing rules affected by this order:

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 48.02.060; RCW 48.18.120(2); 48.20.450; 48.44.050; 48.46.200

Other authority : RCW 48.18.120(2); 48.20.450; 48.43.012; 48.43.015; 48.43.018; Pub. Law 111-148, sec. 2704.

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- ☐ That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: The Patient Protection and Affordable Care Act (P.L. 111-148) establishes specific requirements that health carriers must follow when they receive an application for individual coverage from a person under age 19. Guidance from the US Department of Health and Human Services, and their interim final regulations require carriers to make the enrollment process available to persons in that age group. These requirements go into effect for policy years beginning on or after September 23, 2010. The Commissioner received a petition from a health plan asking for rule making to address the guaranteed issue, special and open enrollment period requirements in rule so that all carriers understand the way they are expected to implement the federal requirements in Washington state. These rules help prevent disruption in the individual health insurance marketplace by promoting a uniform approach to new regulatory requirements.

Date adopted: September 29, 2010

CODE REVISER USE ONLY

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>2</u>	Amended	_____	Repealed	_____
Federal rules or standards:	New	<u>2</u>	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	<u>4</u>	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

SUBCHAPTER J

HEALTH PLAN ENROLLMENT AND COVERAGE REQUIREMENTS

NEW SECTION

WAC 284-43-1001 Purpose and Scope. Health carriers may require some applicants for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW, and may reject an individual for an individual health benefit plan based upon preexisting conditions under certain circumstances described in RCW 48.43.012, 48.43.015 and 48.43.018. Section 2704 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, and the interim final regulations interpreting it, 45 C.F.R. Sec. 145.103 and 147.108, provide that a carrier may not apply preexisting condition exclusions for persons under age nineteen. These rules explain the requirements that are in effect in Washington as a result of these federal changes, applicable to policy years beginning on or after September 23, 2010.

NEW SECTION

WAC 284-43-1005 Definitions. As used in this section, unless the context requires otherwise:

"Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

"Carrier" has the same meaning as its definition in RCW 48.43.005(16) and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act, Pub. L. 111-148.

"Open enrollment" means a period of time as defined in these rules held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

"Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

"Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

NEW SECTION

WAC 284-43-1010 **Preexisting conditions.** For any individual health benefit plan, a carrier must waive any exclusion of benefits, including a denial of coverage, and may not otherwise limit coverage based upon a preexisting condition waiting period if the applicant or enrollee is a person under age 19. This requirement:

- (1) Does not apply to an individual grandfathered plan under the Patient Protection and Affordable Care Act, Pub. Law 111-148; and
- (2) Includes those persons under age nineteen with a preexisting condition who seek coverage as the primary insured or as a dependent or as a spouse under individual health benefit plans that permit the enrollment of dependents, and enrolled persons under age nineteen who seek benefits for which they are otherwise eligible.

NEW SECTION

WAC 284-43-1015 **Enrollment of persons under age 19.** (1) If a carrier offers an individual health benefit plan, for policy years beginning on January 1, 2011, a carrier must offer an open enrollment period for persons under age nineteen that begins November 1, 2010 and extends through December 15, 2010. During the initial open enrollment period of November 1, 2010 through December 15, 2010, any special enrollment period or any other enrollment period, a carrier must not require a person under age nineteen applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW or provide other evidence of insurability.

(2) A carrier may offer enrollment in an individual health benefit plan outside the open or special enrollment period, but must not require any evidence of insurability or completion of the standard health questionnaire for applicants under age 19.

(3) For individual health plan policy years beginning on or after September 23, 2010, a carrier must offer a special open enrollment period to a person under age 19 who experiences a qualifying event. The special enrollment period must continue for at least thirty-one days from the date of a qualifying event. The prohibition against requiring evidence of insurability or completion of the standard questionnaire applies. A qualifying event means the occurrence of one of the following:

(a) The person under age nineteen or the person under whose policy they were enrolled loses employer sponsored insurance;

(b) The person under age nineteen loses eligibility under medicaid or other public program providing health benefits;

(c) The person under age nineteen or the person under whose policy they were enrolled loses coverage as the result of dissolution of marriage;

(d) The person under age nineteen or the person under whose policy they were enrolled changes residence, and the health plan under which they were covered does not provide coverage in that service area.

(4) A carrier may either accept currently pended applications for a person under age 19 on a guaranteed issue basis or may return the application with instructions to resubmit it during the open enrollment period that begins November 1, 2010.